

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

SHIRLEY T. HIGH ET AL., Appellants, vs. F. E. COYNE, Collector, &c., <i>et al.</i> , Appellees.	No. 225.
EBEN J. KNOWLTON ET AL., Plaintiffs in Error, vs. FRANK R. MOORE, Collector, &c., <i>et al.</i> , Defendants in Error.	No. 387.

Brief for Appellants and Plaintiffs in Error.

I.

These cases, and the errors relied upon in each, are fully stated in the briefs of other counsel, and therefore this one will be confined to a discussion of the legal questions supposed to be involved in both.

The unusual character of the act in controversy in these cases makes it necessary, before discussing the principal questions, to ascertain upon what subject the charge or burden is actually imposed. What is the correct legal construction of Sections 29 and 30 of the statute in this respect? Do they impose a tax or a condition upon the privilege of disposing of personal property by will, or on the privilege of receiving each legacy and distributive share conferred upon the legatees and distributees by the laws of a State or Territory, or do they impose the tax or duty upon the whole personal estate of the deceased disposed of by will and distributable under the laws of a State or Territory *in solido*, when it exceeds ten thousand dollars in value, or upon the property representing each legacy and distributive share separately? We insist that they cannot be so construed as to impose a tax or a condition upon the privilege of disposing of property by will, or upon the privilege of receiving a legacy or distributive share under the will, or under the law of the State or Territory; but that, if so construed, they are unconstitutional and the tax is invalid, because, with that construction, it is an attempt, under

the guise of taxation, to regulate and control a subject over which Congress has no power, but which is within the exclusive jurisdiction of the States. The privilege or right to make last wills and testaments and to take property under them, and by inheritance when there is no will, is not conferred by the United States, but by the several States in the exercise of their reserved power to legislate upon all matters of purely local concern, and by the Territories in the exercise of the authority vested in them by their organic acts. The power to regulate the administration of decedent's estates, to declare who shall be competent to make last wills and testaments, to provide the manner in which they shall be executed, and to determine who shall be competent to take under them, and the conditions upon which they shall succeed to the ownership of the property, as well as the power to establish rules of inheritance and distribution, and to impose all such conditions and limitations upon the rights and privileges conferred upon the beneficiaries as they may deem proper, belongs exclusively to the States (*McCormick vs. Sullivan*, 10 Wheat., 202; *United States vs. Fox*, 94 U. S., 315; *Green vs. Van Buskirk*, 72 U. S., 370; 74

U. S., 139; *Hervey vs. Rhode Island Locomotive Works*, 93 U. S., 664; *New York vs. Milne*, 11 Pet., 102; *Gibbons vs. Ogden*, 9 Wheat., 1).

They constitute parts of that great mass of power over local and domestic affairs, and over property situated within their limits which was not surrendered to the general Government, or in any manner abridged or impaired by the letter or spirit of the Constitution. They are of the same exclusive nature as the power to regulate marriage and divorce, to establish the legal relations between parent and child, guardian and ward, principal and agent, trustee and *cestui que trust*, and to determine in what mode and upon what conditions contracts shall be made for the transfer of property within the State. In fact, the power of the State over this subject is more absolute and exclusive than it is over any of the others mentioned, because it has been held by this Court, and by most of the State courts also, that no one has an original or natural right to dispose of his property by will, or to take property by devise or bequest, or by inheritance, and that all these rights and privileges are held and enjoyed wholly at the will of the State. The whole right being acquired from

the State, the exclusive power to regulate its exercise necessarily belongs to the State.

In *Mager vs. Grima*, 8 How. (49 U. S.), 490, Chief Justice TANEY, in delivering the opinion of the Court, said :

“Now the law in question is nothing more than an exercise of the power which every State and sovereignty possesses of regulating the manner and terms upon which property, real or personal, within its dominion, may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every nation may, unquestionably, refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if he thinks proper, direct that property so descended or bequeathed shall belong to the State. * * * And if a State may deny the privilege altogether it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.”

In that case the legatee was an alien, but the principle upon which it was expressly decided was broad enough to embrace all legacies and inheritances, and was afterwards approved and

applied in *United States vs. Perkins*, 163 U. S., 625, where the Court said :

“ Though the general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit, we know of no legal principle to prevent the Legislature from taking away or limiting the right of testamentary disposition, or imposing such conditions upon its exercise as it may deem conducive to the public good. In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases ; a declaration that in the exercise of that power he shall contribute a certain percentage to the public use ; or, in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury *before the bequest shall take effect*. The tax is not upon the property in the ordinary sense of the term, but *upon the right to dispose of it*, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee. * * * This, therefore, is not a tax upon the property itself, but is merely the price exacted by the State

for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution."

And again, in *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., 283, the Court, after citing a number of authorities, said :

"It is not necessary to review those cases or state at length the reasoning by which they are supported. They are based on two principles :

"1. An inheritance tax is not one on property, but one on the right to succession.

"2. The right to take property by devise or descent is the creature of the law and not a natural right—a privilege, and therefore the *authority which confers it* may impose conditions upon it.

"From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between them and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective State constitutions requiring uniformity and equality of taxation."

The Supreme Court of Illinois in the case of *Kochersperger vs. Drake*, 167 Ill., 127, had construed the statute and held that it did not impose a tax on the property itself, but on the right to dispose of it by will or to take it by inheritance;

and this Court, as it always does except in cases involving the validity of contracts which are alleged to have been impaired by State legislation, accepted that construction without discussion. The Court in Illinois said:

"To deny the right of the State to impose such a burden or condition is to deny the right of the State to regulate the administration of a decedent's estate. When by the Act of June 15, 1895, for the taxation of gifts, legacies and inheritances in certain cases, the Legislature prescribed that a certain part of the estate of the deceased person shall be paid to the treasury of the proper county for the use of the State, it was in effect an assertion of sovereignty in the estates of deceased persons. * * * The amount reserved to the State from the estate of a deceased owner is not a tax on the estate, but on the right of succession."

The Illinois act is quite similar in some of its provisions to the one involved in these cases, while in others it is very different; and even if this Court had itself construed it as not imposing a tax upon the property, but a duty or a condition upon the right or privilege of disposing of it, or of receiving it, the decision would not have been conclusive in these cases.

One very important feature of the Illinois act, having a direct bearing upon its construction, was that the progressive rates were based on relationship and the *values of the shares* taken by the beneficiaries, and not, as in this case, by the relationship and the value of the whole estate from which they are taken. The State took its contribution out of each share in proportion to its value, and provided that it should be deducted *from the share* by the administrators, executors and trustees.

It must be borne in mind also that it was a State statute, enacted by the same authority that conferred the right or privilege to make wills and take legacies and inherit property, and that it was not passed in the exercise of the authority to tax, but in the exercise of the exclusive authority to impose conditions upon the right to make wills and the right to inherit property, and to regulate the administration of decedents' estates. The question presented in this Court was simply whether, in the exercise of such authority, the State had denied to any person the equal protection of the laws, and its solution depended solely upon the question whether the regulations operated unequally upon the constituents of the

same class. The State having undoubted power to declare that no one should be capable of disposing of property within its limits by will, or of receiving a legacy or distributive share out of property within its limits, necessarily had the power also to declare the terms and conditions upon which the right or privilege, when conferred, should be enjoyed, and to create classes and impose different terms and conditions upon the different classes. But the United States possess no power to determine who shall or who shall not dispose of property by will, or who shall or shall not take property under a will or by inheritance, and therefore, unless its provisions are so plain and conclusive as to preclude every other construction, an act of Congress cannot be so interpreted as to impose a tax or condition upon these rights or privileges, or—which, in legal effect is precisely the same thing—to regulate the administration and distribution of decedents' estates.

The Constitution of Illinois provides that:

“The General Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to

the value of his, her or its property" (Art. IX., Sec. 1).

If the State legacy and inheritance law had been construed as a tax law, it would have been a clear violation of the State Constitution, because it did not impose the burden in proportion to the value of the property, but made discriminations in the rates on account of the value of the legacy or share and the relationship of the parties to the decedent, and exempted different amounts in the hands of the different classes. Under that law the title to so much of the property as was appropriated to the State never vested in the devisee, legatee or heir, but was, as said by the Court in the Drake case, "reserved to the State;" or, as was said by this Court in *United States vs. Perkins*, "it is not until it has yielded its contribution to the State that it becomes the property of the legatee." Under that act, if the legacy or share was payable in money, the administrator, executor or trustee was directed to deduct the State's portion before making any payment to the legatee or heir, and charge it against the legatee or distributee; and, if the legacy or distributive share was not payable in money, the administrator, executor or trustee

was required to collect from the beneficiary the amount going to the State, and they were forbidden to deliver any specific legacy or property until such collection had been made for the State. The administrators, executors and trustees were authorized by the act to collect the contributions from the beneficiaries by legal proceedings, if necessary, and thus place them in the estate of the decedent in order that the State might take its share under the law (Rev. Stat. 1896, Ch. 120, Par. 319). It did not, therefore, impose a tax upon the legacy or share, or on the property itself in the hands of the legatee or heir, or in the hands of the administrator, executor or trustee, but deducted the contribution of the State from the estate of the decedent before the legatee or heir could receive either the title or the possession; in other words, the act made the State itself a legatee or heir, as the case might be, and gave it a preference over all others in the distribution.

Upon the theory that the act was a regulation of the administration of the estates of decedents, or upon the theory that a State may wholly deny the privilege of disposing of property by will, or receiving it under a will or by inheritance,

and may, therefore, when the privilege is granted, or afterwards and before the title is vested in the beneficiary, appropriate such part of the estate to itself as it chooses, the Illinois statute might very well be sustained as one imposing a condition or burden upon the enjoyment of a privilege or right granted by the State. It could not have been sustained as a valid law under the Constitution of the State upon any other ground. But no such theories can have any weight in the interpretation of an act passed by Congress on this subject, for the obvious reason that it has no control over devises, bequests or inheritances, and can neither grant nor withhold any privilege concerning them. When it imposes a charge or burden upon legacies and distributive shares, or upon the property out of which they arise, as is the case here, it does so in the exercise of its general power to lay and collect taxes, duties, imposts and excises. The act under consideration must, therefore, be treated as a tax law pure and simple, and, being so, it must be construed according to the same rules that are applied to other tax laws; and the power to enact it must be tested and limited by the same constitutional provisions that are applicable to other cases of taxation.

The States legislate upon these subjects independently of their power of taxation, but Congress does not and cannot. Over certain subjects the power of the United States and the power of the several States is independent and concurrent, while over others the power of one or the other is exclusive. Generally they may legislate upon the same subjects, and may tax the same things at the same time; but in case of conflict the paramount authority, whether it is vested in the United States or in the State, must prevail. We have, as was said in *Ableman vs. Boothe*, 21 How., 509, "two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers and each, in its sphere of action, prescribed by the Constitution of the United States, independent of the other."

In *New York vs. Milne*, 11 Pet., 102, the Court based its decision upon what it stated to be "impregnable positions," as follows:

"That a State has the same undeniable and unlimited jurisdiction over the persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restricted by the Constitution of the United States. That, by virtue of this, it is not only the right but the bounden

and solemn duty of a State to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained, and that, consequently, in relation to these the authority of the State is complete, unqualified and exclusive." (See, also, *United States vs. Dewitt*, 9 Wall., 41; *License Tax Cases*, 5 Wall., 462.)

"The Constitution, in all of its provisions, looks to an indestructible Union, composed of indestructible States" (*Texas vs. White*, 7 Wall., 700; see *Lane County vs. Oregon*, 7 Wall., 71). It is evident that the States are not indestructible in any proper sense of the term if Congress may constitutionally impose unlimited taxation or destructive conditions upon rights, privileges and franchises conferred by their legislation in the exercise of the power to control their own internal affairs; and that the power of Congress to tax, and the power to impose conditions, if

they exist, are unlimited, and may be so used as to destroy the right, privilege or franchise upon which the taxation or condition is imposed, cannot be disputed. By such means every faculty of the State, except its capacity to exist merely as a political body, might be rendered useless so far as its exercise could benefit its citizens.

What we insist upon is that, as the right to dispose of property by will, or to take it under a will, or by inheritance, not being a common right existing independently of legislation, but being created or conferred by the several States in the exercise of their exclusive power over the subject, no other government can impair or interfere with it by imposing taxes or conditions upon its enjoyment. On this subject the power of the States and of the United States is not concurrent. The reserved power of the States is independent and exclusive, or, as was said by Justices DAVIS and NELSON, in their dissenting opinion in the *Veazie Bank* case, "as supreme as before they entered into the Union."

It is essential to the preservation of our system of government that the line of demarkation between the delegated powers of Congress and the reserved powers of the several States should

be distinctly defined and scrupulously respected, and this Court has never hesitated, when a proper case was presented, to condemn the legislation of either one when it encroached upon the rights of the other. We feel confident that, if the proper construction of the act imposing this tax or condition requires a decision of the question, the Court will sustain the exclusive power of the States over this subject in respect to the imposition of taxes and conditions, as well as in respect to the regulation of descents and distributions.

But the act under consideration does not purport by its terms to impose a burden or condition upon the devolution of the title to the property, or upon the privilege of disposing of it, or receiving it from the estate of a deceased person, and the nature of the subject and the absence of power over it forbid the Court to put a strained construction upon it in order to attribute such a purpose to Congress. No authority exists in that body to take money or other property from the people for public purposes except by direct taxation, or by the imposition of uniform duties, imposts and excises, or by providing for just compensation to the owner in all other cases.

The power of Congress, however, to tax property, as such, having been expressly delegated by the Constitution, subject only to the rules of apportionment and uniformity, and the exclusive power over the subject of wills and the distribution of estates of decedents having been reserved to the States, it must be presumed, in the absence of conclusive evidence to the contrary, that the act now in question was not intended to obstruct or in any manner interfere with the State regulations concerning wills and inheritances, but was passed in the exercise of the authority expressly conferred.

The act of June 30, 1864 (13 Stat., 218), imposed a tax upon legacies and distributive shares of personal property, and also upon successions to real estate, but the provisions of the act on these two subjects were contained in separate sections, and it is plain that it was the purpose of Congress to make a distinction between the character of the tax or duty imposed in the two cases, for otherwise there was no reason why they should not be provided for in the same sections, or why different language should be employed in designating the thing taxed. At that time it was generally understood that a tax on

real estate was a direct tax, but that a tax on personal property was not; and therefore, while the tax was imposed directly upon the property held in charge or trust for the payment of legacies and distributive shares, and the rates were varied according to the relationship of the beneficiaries to the decedent, the phraseology was changed in the case of successions to real estate, and the tax or duty was expressly imposed upon the "devolution" or transfer of title. If it had been then intended to lay the tax or duty in both cases, either upon the property itself, or upon the devolution or transfer of ownership, or upon the privilege of disposing of the property or taking it under a will or under the law, it is impossible to account for the deliberate change in the phraseology of the act. (See Secs. 124, 150, Act of 1864, 13 Stat., pp. 285-291.) The statute now in controversy, so far as it classifies the beneficiaries, is simply a re-enactment of the law of 1864 upon that subject, but it contains additional provisions which clearly show a purpose to impose the tax upon the entire personal estate, and not upon the privilege or upon the legacies and distributive shares separately. It alters the basis of the valuation or assessment

in order to make the highest rate and amount of the tax depend upon the value of the whole personal estate held in charge or trust for the payment of legacies and distributive shares, and not alone upon the relationship, as was the case under the old act.

The new provisions inserted in the act now before the Court are as follows :

“Where the whole amount of said personal property shall exceed in value ten thousand dollars, and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be,” etc., etc.

* * * * *

“Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rate of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of such property shall exceed the sum of five hundred thousand dollars, but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by

two and one-half; and, where the amount or value of such property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three."

Whatever may have been the true construction of the original act, we think the purpose and effect of these additional provisions cannot be misunderstood.

The question as to the constitutionality of the act of 1864 imposing a tax or duty upon legacies and inheritances never came before this Court or before any other Court of the United States so far as we know; but in *Scholey vs. Rew*, 23 Wall., 331, the validity of the tax or duty on successions to real estate was involved, and the Court held, upon the authority of previous adjudications as then interpreted, that, as it was not a tax on the real estate, it was not a direct tax, but was a duty on the "devolution of title," and the constitutionality of the tax was sustained upon that ground. There could be no ground for controversy concerning the true construction of the act, for its language was plain as to the thing intended to be taxed; but the question whether Congress possesses power to impose a tax or condition upon the exercise of a

right or privilege of this character conferred by the State was not presented in the argument or considered by the Court, and, therefore, the case is not a conclusive authority on that point. Nor did the Court in that case consider the effect of the exemption of all estates not exceeding ten thousand dollars in value, or the effect of the classification, or of the progressive rates of taxation based on the relationship of the beneficiaries to the decedents.

In *Clapp vs. Mason*, 94 U. S., 589, and in *Mason vs. Sergeant*, 104 U. S., 689, the only question decided by the Court was that the tax on the succession to real estate in those cases had not accrued prior to the repeal of the act imposing it; and in *Sturgis vs. United States*, 108 U. S., 363, which was a suit by the Collector to enforce the payment of the legacy tax, it was also held that it had not accrued before the passage of the repealing act, which took effect October 1, 1870. In *United States vs. N. Y. Life Ins. & Trust Co.*, 9 Benedict, 413, which was an action to enforce the collection of a legacy tax, Judge BLATCHFORD decided that there could be no recovery because the act had been repealed before the legacy took effect.

Except in the case of successions to real estate we are not aware of an instance in which Congress has attempted to impose a tax or burden upon a privilege or franchise granted by a State in the exercise of its exclusive authority to regulate and control its purely internal affairs. In the case of *Veazie Bank vs. Fenno*, 75 U. S., 533, this Court decided that the tax in controversy was not imposed upon the property of the State banks, or upon their franchises, but upon the circulation or use of their notes as a currency, and that it was a duty or excise and not a direct tax. It was argued at the bar that if Congress possessed the power to impose such a tax it might destroy a privilege conferred upon the State banks by the laws of the several States, and that it could not do indirectly, under the guise of taxation, what it had no power to accomplish by direct legislation. Chief-Justice CHASE, who delivered the opinion of the Court, said:

“Is it, then, a tax on a franchise created by a State which Congress, upon any principle exempting the reserved powers of the States from impairment by taxation, must be held to have no authority to lay and collect? We do not say there may not be

such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of State government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a State are necessarily exempt from taxation, for franchises are property, often very valuable and productive property, and, when not conferred for the purpose of giving effect to some reserved power of a State, seem to be as properly objects of taxation as any other property. But in the case before us the object of taxation is not the franchise of the bank, but property created or contracts made and issued under the franchise or power to issue bank bills."

Further on the Court, after having stated the power of Congress to provide a circulating medium for the country, said:

"Having thus in the exercise of undisputed constitutional powers undertaken to provide a currency for the whole country, it cannot be questioned that Congress may constitutionally secure the benefit of it to the people by appropriate legislation. To this end Congress has denied the quality of

legal tender to foreign coins and has provided by law against the imposition of counterfeit and base coin on the community. To the same end Congress may restrain, by suitable enactments, the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile. Viewed in this light as well as in the other light of a duty on contracts or property, we cannot doubt the constitutionality of the tax under consideration."

As the Court held that the tax in controversy was not imposed on the franchise, the observations concerning the powers of Congress in relation to that subject were *obiter dicta*; but assuming that franchises granted by a State which are of such a nature as to constitute property, are taxable as property by the United States, the rule would not apply in these cases, for it will not be contended, we presume, that the privilege of making wills or of receiving legacies or inheritances is property. It is a mere privilege which the State may grant or withhold at pleasure, and, having been granted, it may be taken away by the State at any time before property rights have actually been acquired under the law by

the transmission of title from the decedent to the devisee, legatee or heir.

Justices NELSON and DAVIS differed from the construction placed upon the act by the majority of the Court, and dissented from the opinion on the ground that it was a tax upon the franchise granted by the State. They said :

“ As we have seen in the forepart of this opinion, the power to incorporate banks was not surrendered to the Federal Government, but reserved to the States; it follows that the Constitution protects them, or should protect them, from any encroachment upon this right. As to the powers reserved, the States are as supreme as before they entered into the Union, and are entitled to the unrestrained exercise of them. The question as to the taxation of the powers and faculties belonging to government is not new in this court. * * * It is true that the present decision strikes only at the power to create banks, but no person can fail to see that the principle involved affects the power to create any other description of corporation, such as railroads, turnpikes, manufacturing companies and others.”

The same question came before this Court again in *Merchants' National Bank vs. The United States*, 101 U. S., 1, and the tax was

again sustained, but the decision was based upon the sole ground that Congress possessed paramount authority over the subject of the currency, and could, therefore, tax out of existence, if necessary, the circulation of State bank notes or notes issued by municipalities. The Court, after quoting from the case of *Veazie Bank vs. Fenno*, said:

“The tax thus laid is not on the obligation, but on its use in a particular way. As against the United States, a municipality has no right to put its notes in circulation as money. It may execute its obligations, but cannot, against the will of Congress, make them money. The tax is on the notes paid out; that is, made use of as a circulating medium. Such a use is against the policy of the United States. Therefore, the banker who helps to keep up the use by paying them out—that is, employing them as the equivalent of money in discharging his obligations—is taxed for what he does. The taxation was no doubt intended to destroy the use; but that, as has just been seen, Congress had the power to do.”

Considering these two cases together, we think it may be safely asserted that this Court has never authoritatively decided that Congress possesses the power to impose a tax or charge

upon any privilege or franchise granted by a State, especially a privilege or franchise relating to a subject over which the State itself has exclusive control.

The suggestion, therefore, that it was the purpose of Congress to impose a tax or condition upon the exercise of the power to make wills, or to impose a tax or duty upon the privilege of receiving legacies or distributive shares, is not only inconsistent with the language and structure of the act, and with its history, but attributes to that body an attempt to interfere with State regulations upon a subject within their exclusive jurisdiction. It is true that, although the title to the property bequeathed or inherited is vested in the legatee or distributee by the laws of the State or Territory immediately upon the death of the former owner, the beneficiary cannot under this act, if it is valid, secure possession of it until the tax or duty is paid; but, if the tax or duty has been constitutionally imposed in the exercise of a power conferred upon Congress, this provision might be regarded merely as providing a mode for its collection. Otherwise, it is a plain regulation of the administration of decedents' estates and a

direct interference with the existing laws of the States and Territories on that subject, and is void for the same reasons so often given by this Court in cases where State legislation has attempted to obstruct or interfere with interstate or foreign commerce by taxation, or by the imposition of burdens in other forms upon the business of conducting it.

This is not a personal tax or duty, but a property tax. It is not like the tax imposed by the same act upon sales of merchandise made at exchanges, boards of trade, and other similar places, which was involved in the case of *Nicol vs. Ames*, 173 U. S., 509. In that case it was held that the tax was imposed upon the privilege of making sales at such places, and not on the property; and its payment was enforced by penalties upon the person making the sales, and not by the seizure or sale of the property itself. In the present case the administrators, executors or trustees having the property in charge or trust are required by the act to pay the tax or duty before satisfying the legacies or making distribution, but the legatees or distributees to whom it belongs are not personally liable in any case, and if they should secure possession before

payment of the tax or duty, the only remedy of the Government is to enforce the lien. At the time the tax or duty attaches the property bequeathed or inherited belongs as absolutely to the legatees and distributees under the laws of the State or Territory as if it had been acquired by their own skill and labor, and the tax or duty is not deducted from it before their title vests, as is the case where a burden or condition is imposed by a State or Territory in the exercise of its power to grant or withhold the right to make wills or to inherit. This property, the title to which has vested in the beneficiaries under the laws of the State or Territory within whose exclusive jurisdiction it is situated, is entitled to all the protection afforded by the Constitution and the laws of the land; its owners cannot be deprived of it except by due process of law, nor can any part of it be taken from them for the public use except by constitutional taxation, or by making just compensation. The State or Territory itself cannot take it away from them, after the death of the former owner, except by the same processes, and upon the same considerations, that it could take other property within its limits. They may provide by law,

before the death of the owner, that no property shall be disposed of by will or pass by inheritance, or that a certain deduction or contribution shall be made for the public use when the ownership ceases by death, and that the shares of the beneficiaries under his will, or under the laws of inheritance, shall be diminished to that extent; but this is the utmost limit of their arbitrary power over the subject.

II.

The tax is imposed upon the whole personal property of a decedent held in charge or trust by administrators, executors or trustees, out of which legacies or distributive shares arise, except such parts of the estate as are taken out by the surviving husband or wife, and the rates of taxation are fixed upon the several parts held in charge or trust, not according to the amount or value of each share, but (1) according to the degree of relationship of the legatee or distributee to the former owner, and (2) according to the amount or value of "such personal property;" that is, the whole personal property held in charge or

trust and disposed of by will or distributed under the law. The language of the act is, that :

“Any person or persons having in charge or trust, as administrators, executors or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, * * * shall be, and hereby *are*, made subject to a duty or tax to be paid to the United States,” etc., etc.

Considered by itself, and construed literally, this provision would mean that the administrators, executors or trustees having charge of the property are subject to the tax, but all the provisions of the act taken together show that the charge is really imposed upon the property in their hands out of which legacies and distributive shares are to be paid, and that they are merely charged with the duty of making the payment to the Government, “before payment and distribution to the legatees or any person entitled to beneficial interest therein.” Although such part of the property as may pass to the husband or wife of a decedent by will, or by the law, is exempt from taxation, this exemption does not,

by the terms of the act, or by the official construction of it, either reduce the valuation of the taxable estate, or affect the rate of the tax or duty upon the portions of the estate remaining for other legatees or distributees. For instance, if the value of the whole personal property disposed of by will, or distributable under the law, exceeds one million dollars, and all of it except five thousand dollars is given by will, or distributed under the law, to the husband or wife of the decedent, the five thousand dollars, if it goes to a lineal descendant or ascendant, is taxed at the rate of two and one-fourth per centum, or if it goes to certain collaterals, or to a stranger in blood, it is taxed at the rate of fifteen per centum; whereas, if the whole amount of the personal property subject to the payment of legacies and distributive shares had not exceeded ten thousand dollars, there would have been no tax at all on the part taken out to pay the five-thousand-dollar legacy or distributive share, no matter who received it.

The words "whole amount of such personal property as aforesaid," used in the first part of the act, unquestionably refer to the aggregate amount or value of the property held in charge

or trust by administrators, executors or trustees for the payment of legacies and distributive shares, including the part going to the husband or wife of the decedent, and whenever the same or equivalent words are employed in the act they mean the same thing. After thus designating the property upon which the tax is imposed, the act continues to refer to it as "such personal property," "said personal property," and "such property," leaving no doubt that the purpose was to tax the whole personal property held for the payment of the legacies and distributive shares, except the part taken by the husband or wife and so much as may be required to pay debts and expenses, but regulating the tax or duty on each part taken out of it as a legacy or share by the relationship of the legatee or distributee to the decedent, and by the value of the whole, including the share of the husband or wife. If the words above quoted refer to the separate parts of the estate taken out by the beneficiaries, instead of the whole personal estate left by the decedent, it follows that all legacies and distributive shares not exceeding ten thousand dollars in value are exempted, and that the progressive rates are varied according to the value of

each share. This construction, while it would not materially affect the argument in opposition to the constitutionality of the act, would greatly impair its operation as a revenue measure, and require the Government to refund much the larger part of the taxes already collected. Under such a construction, all legacies and shares not exceeding ten thousand dollars in value would be exempted, and a legacy or share valued at twenty-five thousand dollars, and taken by a lineal descendant, or a lineal ancestor, would be taxed three-fourths of one per cent., without regard to the value of the personal estate of the decedent ; whereas, under the act as officially construed and enforced, such a legacy or share, if taken out of a personal estate exceeding one million dollars in value, is taxed at the rate of two and one-quarter per cent.

In the Knowlton case, all property taken as legacies, without regard to its amount or value in each case, was taxed at the highest rates imposed by the act, simply because the personal estate out of which it was taken was of greater value than one million dollars. The property of one brother of the decedent, who received a legacy of one hundred dollars, and that taken by

another brother, who received a legacy of one hundred thousand dollars, were taxed at the rate of two and one-quarter per cent. ; whereas, if the rate of taxation and the exemption had been controlled by the value of the legacy, the part taken by one brother would not have been taxed at all, and the part taken by the other would have been taxed one and one-eighth per cent., or just half as much as was demanded and received by the Government (Record No. 387, p. 16).

Whenever the act refers to the separate legacies and distributive shares the language used is plain and appropriate. Section 29 provides that "where the whole amount of said personal property shall exceed in value ten thousand dollars, and shall not exceed in value the sum of twenty-five thousand dollars, the tax shall be: First. Where the person or persons entitled to any *beneficial interest* in such property shall be the lineal issue or lineal ancestor, brother or sister, to the person who died possessed of such property as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of *such interest* in such property," and this clear distinction between the several legacies and distributive shares and the whole amount or

value of the property held in charge or trust for their satisfaction, is preserved in every clause imposing the tax or duty and defining the rate. When the "amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars," the rates of duty or tax imposed by the five preceding clauses of the act upon the parts held for the payment of legacies and distributive shares to the different classes of beneficiaries, are to be multiplied by one and one-half; and this progressive system proceeds, according to the amount or value of the property out of which the shares are taken, until it exceeds the amount or value of one million dollars; but after that the tax or duty is proportional so far as it is affected by the value of the estate out of which the legacies or distributive shares are received, though it continues to be controlled by the degree of relationship to the decedent.

So far as the claim of the Government is concerned, the tax or duty is not apportioned or distributed upon the several legacies or distributive shares, but is charged against the entire personal estate left by the decedent, except that

part passing to the husband or wife, and the debts and expenses of administration, and, subject to these exceptions, every part of it may be subjected to sale for the payment of any part of the tax or duty, without regard to its ownership under the will or under the law. The only provision made for the release of any part of the estate from the lien created by the law to secure the payment of the entire tax imposed upon it, is contained in Section 30, which, after providing "that the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid and discharged to the United States," and, after providing for an enforcement of this lien by judicial proceedings, enacts that, when a sale is made, such sale and the deed made thereunder "shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this act." If, therefore, the administrator, executor or trustee should actually pay to the collector an amount equal to

the tax upon the part of the property to be taken by one of the legatees or distributees, and receive his receipt for it, and should deliver the part to such legatee or distributee, it would still remain bound for all the other unpaid portions of the tax upon the whole estate.

This act does not provide, as was done in the Illinois statute, that the tax paid by the administrators, executors or trustees shall be charged to the respective legatees or distributees, but simply provides that the collector's receipt "shall be sufficient evidence to entitle such executor, administrator or trustee to be allowed such payment by every tribunal which by the laws of any State or Territory is or may be empowered to decide upon and settle the accounts of executors and administrators," which means simply that he shall be allowed credit on his general account in the settlement of his trust.

If it had been the purpose of the act to impose the tax upon the property representing each legacy or distributive share separately, or upon the privilege of disposing of or taking each legacy or distributive share separately, or upon the transfer or devolution of the title to each legacy or share, the progressive rates would un-

doubtedly have been varied according to the amount or value of the share received by each beneficiary, and not according to the amount or value of the entire personal estate held for the satisfaction or payment of all the shares. It is impossible under the act to determine either the rate or the amount of the tax to be collected without first making a valuation or assessment of the whole personal estate, including even the part going to the husband or wife, and, this having been done, the amount or value of each share, and the degrees of relationship, are material only for the purpose of making the calculations. For instance, property or money of the value of one hundred dollars taken out of an estate valued at more than one million dollars is subject to the same rate of taxation as property or money of the value of five hundred thousand dollars taken out of the same estate; but, when the hundred-dollar share is taken out of an estate of less value than twenty-five thousand dollars, the rate of taxation is only one-third as much.

Two estates of the same value, if distributed in the same proportions among beneficiaries bearing the same relations to the decedents, pay the same initial and progressive rates and the same

amounts of tax, but the parts of the property passing by will, or under the law, to beneficiaries who receive the same amounts out of two estates of different values, and who bear the same relations to the decedents, are subjected to very different rates. Such a result is, it seems to us, wholly inconsistent with the view that the charge was intended to be imposed upon the shares separately, or upon the privilege of receiving them.

Again, as already stated, although the property taken by the surviving husband or wife is not taxed, the rates of taxation upon the remaining parts taken by other legatees or distributees are regulated according to the value of the entire personal estate, including what is received by the husband or wife. All the provisions of the act show clearly that the valuation or assessment of the whole personal property of a decedent, held in charge or trust by administrators, executors or trustees, constitutes the basis of the tax, and we do not see that there is any language employed in it to justify the conclusion that the thing assessed is not the thing taxed.

III.

But whether the tax is imposed upon the whole personal property disposed of by will or

distributable under the law, and held in charge or trust by the administrator, executor or trustee, *in solido*, or upon the property representing each legacy or distributive share separately, or upon the privilege, it is a direct tax within the meaning of the Constitution, as construed by this Court, and is void because it was not apportioned.

The first clause in the enumeration of the powers delegated to Congress authorizes that body "to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States." If the Constitution had contained no other provision upon the subject, this alone would have been sufficient to make a distinction between "taxes" and "duties, imposts and excises," because the latter were required to be uniform throughout the United States, while the former was not. Other provisions show that the word "taxes," as used in the clause quoted, meant only direct taxes, and that the words "duties, imposts and excises," meant only indirect taxes. Direct taxes were required to be apportioned among the several States according

to their representative population, and this mandatory provision was supplemented by a prohibitory one declaring that "no capitation, or other direct tax, shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken." So far, therefore, as express constitutional requirements and prohibitions can protect the people of each State, and all the people of all the States, against discriminating taxation, it has been done. Apportionment of all direct taxes, in order that unjust burdens might not be imposed on the people of one State, or a few States, by levying contributions only on such property as they might own, or such as they might own in greater amounts than the people of other States; and uniformity in all indirect taxation, in order that all owners of the same kind of property everywhere might bear this part of the public burden equally, constituted the two safeguards which the framers of the Constitution provided for the protection of the States and their citizens against intentional or accidental discriminations in the legislation of Congress upon these subjects. We venture to say that no case was ever presented to this Court which more imperatively

demanding the enforcement of these constitutional guarantees than those now under consideration. The tax laid by the act now in controversy falls with peculiar hardship upon the people in certain parts of the country, while in others it can be applied only in very rare instances. If it had been apportioned, each State might have protected its own citizens against unjust discriminations by assuming its quota and raising the amount by uniform taxation upon property within its limits, under the provisions of its own Constitution; and, if it had been laid in accordance with the constitutional rule of uniformity, all property of the same kind and value would have been subject to the same rates and the same amount of taxation. But neither rule has been complied with; the tax is neither apportioned nor uniform, and, consequently, no matter whether direct or indirect, the law imposing it cannot be sustained as a valid exercise of power under the Constitution.

In discussing the constitutionality of this act we do not consider it necessary to cite all the authorities bearing upon the question, as most of them are referred to and commented upon in the arguments of associate counsel; and besides, this

Court has recently collated and reviewed them in the Income Tax Cases. On the second hearing of those cases, [Pollock vs. Farmers' Loan and Trust Company, 158 U. S., 601,] the Court, after a most exhaustive historical and legal investigation of the question, reached the conclusion that "taxes on personal property, or on the income of personal property, are likewise direct taxes." Perhaps no case before this Court has ever been more elaborately or ably argued than that one was on the two occasions when it was presented, and certainly no one ever received a more deliberate and thorough consideration at the hands of the Court. The act of 1894 imposed taxes, among other things, upon "money and the value of all personal property acquired by gift or inheritance" (Sec. 28), but the precise question presented in the case was whether taxation upon gains and profits arising from personal property was direct and subject to the constitutional rule of apportionment, and the Court held that it was, on the ground that a tax on personal property is direct, and a tax on the gains and profits derived from it is equivalent to a tax on the property itself. This decision, it seems to us, is conclusive in the present cases.

It is not possible to state the proposition more clearly than it is stated in the opinion of the Court, or to support it by stronger reasons than are there given. Among other things, the Court said:

“We know of no reason for holding otherwise than that the words ‘direct taxes’ on the one hand, and ‘duties, imposts and excises’ on the other, were used in the Constitution in their natural and obvious sense. Nor in arriving at what those terms embrace do we perceive any ground for enlarging them beyond, or narrowing them within, their natural and obvious import at the time the Constitution was framed and ratified.”

Again, after a reference to the history of the constitutional provision on the subject of taxation, the Court said:

“The Constitution prohibits any direct tax unless in proportion to numbers as ascertained by the census; and, in the light of the circumstances to which we have referred, is it not an evasion of that prohibition to hold that a general unapportioned tax imposed upon all property owners as a body for or in respect to their property is not direct in the meaning of the Constitution because confined to the income therefrom? Whatever the speculative views of political economists or revenue reformers may be, can it be properly held that the Constitu-

tion, taken in its plain and obvious sense, and with due regard to the circumstances attending the formation of the Government, authorizes a general unapportioned tax on the products of the farm and the rents of real estate, although imposed merely because of ownership and with no possible means of escape from payment, as belonging to a totally different class from that which includes the property from whence the income proceeds? There can be but one answer. Unless the constitutional restriction is to be treated as thoroughly illusory and futile and the object of the framers defeated, we find it impossible to hold that a fundamental requisition deemed so important as to be enforced by two provisions, one affirmative and one negative, can be refined away by forced distinctions between that which gives value to the property and the property itself."

The Court also said :

" A direct tax cannot be taken out of the constitutional rule because the particular tax did not exist at the time the rule was prescribed."

In the opinion the Court uses the words " general unapportioned tax," but it is evident that it was not the intention to hold, even by implication, that no tax could be direct within the meaning of the Constitution unless it was general. But if a tax is not general unless imposed under a

general assessment upon all the taxable property in the country, or upon all the taxable property of the same kind in the country, the income tax itself was not embraced in the term because it was not laid upon all incomes. All individual incomes not exceeding four thousand dollars were wholly exempt, and also the entire incomes of various corporations without regard to their sources or amounts. In the mind of the Court the distinction was probably intended to be made between a general tax and a special or specific duty or excise, such as those imposed on particular occupations, on the earnings of particular kinds of business, and similar charges, which are paid in the first instance by those who are engaged in the occupation or business and cannot, therefore, be paid directly by the people at large.

In the argument on behalf of the Government, as reported in the case, it was contended that a tax was not direct and subject to the rule of apportionment unless it was laid "upon all real property, or at least upon all property;" and in its opinion the Court quoted from Mr. Hamilton's argument in the *Hylton* case, in which he said:

"The following are presumed to be the only direct taxes: Capitation or poll taxes.

Taxes on lands or buildings. General assessments, whether on the whole property of the individuals or on their whole real estate; all else must of necessity be considered as indirect taxes."

We do not understand that the Court approved the whole of Mr. Hamilton's definition, for all it said upon that subject was that :

" He gives, however, it appears to us, a definition which covers the question before us. A tax upon one's whole income is a tax upon the annual receipts from his whole property, and, as such, falls within the same class as a tax upon that property, and is a direct tax in the meaning of the Constitution."

And further on, in the course of the opinion, the Court said :

" In *Bank of Toronto vs. Lambe*, L. R., 12 App. Cas., 535, the Privy Council discussing the same subject, in dealing with the argument, much pressed at the bar, that a tax to be strictly direct must be general, said that they had no hesitation in rejecting it for legal purposes. ' It would deny the character of a direct tax to the income tax to this country, which is always spoken of as such, and is generally looked upon as a direct tax of the most obvious kind; and it would run counter to the common understanding of men on this subject, which is one main clue to the meaning of the Legislature.' "

It is quite clear that Mr. Hamilton's definition, whether wholly correct or not, did cover the question then before the Court, and it is equally clear that it covers the question now presented, for although the tax in controversy, like the one on incomes, is not imposed on all the personal property of all the people, it is imposed upon all the personal property of every decedent's estate to which the act applies.

We think, however, that, according to the definitions given by the authorities, a tax upon a single article is direct if its payment is compulsory and the charge falls primarily and ultimately upon the owner of the property. In every case embraced in the provisions of this act the tax is laid upon personal property of all kinds; upon goods and chattels, money in hand or on deposit, live-stock, bonds, mortgages, promissory notes and choses in action of every description; and, in short, upon everything of value, except real estate, which can be used or sold for the payment of legacies and distributive shares. And, if real estate is sold to raise money for the payment of legacies or shares, the proceeds of the sale are taxed, because such proceeds are held in charge or trust for the purposes specified in the statute.

On the first hearing of the case last cited the Court stated the rule by which it was to be determined whether a tax was direct or indirect, as follows :

“ Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else, or who are under no legal compulsion to pay them, are considered indirect taxes ; but a tax upon property holders in respect to their estate, whether real or personal, or of the income yielded by such estate, and the payment of which cannot be avoided, are direct taxes.”

It is scarcely ever possible to determine in advance with absolute certainty whether a particular tax will or will not be primarily and ultimately paid, in whole or in part, by the owner of the thing taxed ; but it is ordinarily not very difficult to ascertain the intention of the law, or to discover what its practical operation is upon the people and their property. Even a tax imposed upon real estate according to its valuation or assessment, may possibly be wholly or partially shifted by an increase of rental, and so a capitation tax may be partially or wholly recouped by an increase of the charges for personal services ; but this possibility does not prevent

them from being direct taxes within the meaning of the Constitution.

Independently of the historical arguments, all of which sustain our contention that this is a direct tax, the true legal and economic tests seem to be (1) what was the intention of the law-making power as to the incidence of the tax, and (2) what is the practical operation of the law as administered? In the cases of our ordinary duties, imposts and excises, the purpose of Congress that they shall ultimately fall, in whole or in part, upon the consumers of the articles, or upon the immediate customers and patrons of those who primarily pay them, is quite clear; and it is also clear that the larger part, if not all, of such duties, imports and excises are, in fact, finally paid by others than those from whom the Government itself receives them.

In the cases of excises upon tobacco, malt liquors and other articles, where the duty is imposed upon the property itself, payment is required only when it is sold or removed for sale or consumption; and in the case of distilled spirits, which is the only one in which the duty may be collected before sale

or removal for sale or consumption, the law provides expressly that if the property should be lost or destroyed before payment, without the fault or neglect of the owner, the excise shall be remitted, and if so lost or destroyed after payment, and before it reaches the consumer, it shall, upon proper application, be refunded, thus showing on the face of the statutes imposing the excises that the purpose was to charge the purchasers or consumers only. The stamp duties, the imposts on imported goods, the duties and excises imposed upon certain classes of occupations and business, and upon the receipts or earnings of banks, insurance companies and other corporations, are all of the same character. They were intended to be, and are, wholly or partially shifted upon the community at large, although paid in the first instance by the several classes designated in the statute.

But the tax involved in these cases, whether it is a tax on the property or a tax on the privilege of disposing of property, or of receiving it by will or inheritance, is paid primarily and ultimately out of the personal estate left by the decedent, and its payment is not voluntary but compulsory. The tax is laid upon the property

itself, or upon the privilege, and in either case it is taken directly out of the property while it remains in the hands of the administrator, executor or trustee. If the legacy or distributive share consists of money it is paid to the Government and deducted from the amount and value of the estate; and, if it consists of specific personal property, so much of it as may be necessary to raise the amount of the tax must be sold or otherwise disposed of for that purpose, thus diminishing the amount and value of the estate to that extent. And even if the legatee or distributee should procure possession of his part of the property before payment of the tax, there is a lien upon it not only for its own proportion of the tax, but for all the tax, which the collector is directed by the statute to enforce by appropriate judicial proceedings. In fact, the payment of the tax could not be avoided, even by a refusal of the legatee or distributee to take the money or the property, for the estate must go to somebody, and the tax must be paid before any one except the husband or wife can take it. No tax can be more compulsory than this.

There is nothing in this statute, or in the character of the tax, or in the manner of its

collection, conducing to show that Congress intended or supposed any part of it would be ultimately paid by others than the owners of the property upon which it was imposed; nor can it in fact be shifted from the parties who primarily pay it so as to become a charge or burden upon any other person, or upon the property of any other person. Its payment is exacted from the whole estate held for the satisfaction of legacies and distributive shares, and the amount and value of the whole estate, except the shares of the surviving husband or wife, are necessarily and immediately diminished to the full extent of the tax, so that some of the beneficiaries under the will, or under the law, must receive less money or property, as the case may be, than would otherwise have been the case. No part of the tax can possibly be added to the actual or salable value of the property remaining after the payment, nor is there any method by which any part of it can be recouped by the use of the property. It is compulsory and direct according to every rational view that can be taken of it, and was intended to be so, for the purpose clearly was that the largest proportion of the burdens imposed should fall upon the most

wealthy estates. That purpose could not be accomplished if the tax ultimately fell upon others than the owners of the property at the time of its primary payment.

IV.

If this is not a direct tax, it is a duty or excise; and, by reason of the unequal exemptions, arbitrary and unreasonable classifications, and the progressive rates imposed upon the things taxed, is not uniform throughout the United States, as required by the Constitution, and is, therefore, void. The exemption of all the property taken out of the estate by the surviving husband or wife, without regard to its amount or value, and the exemption of all the property taken out of estates where the whole personal property held in charge or trust for the payment of legacies and distributive shares does not exceed ten thousand dollars in value, together with the taxation of every part of the property of the same kind taken out of estates exceeding that amount in value, are features of the statute amply sufficient of themselves to condemn it, if it is held to impose a duty or excise. Saying nothing of the parts taken by husbands and wives,

the total values of which cannot be even approximately estimated, the exemption of all property taken out of estates whose personal property does not exceed ten thousand dollars in value releases from all possibility of taxation, under this act, at least ninety-nine per cent. of all the personal estates of decedents in the United States, and places the whole burden of the tax upon the remaining one per cent.

We know, from common observation, that very few individuals, even in the most wealthy communities, own personal property exceeding ten thousand dollars in value, and that there are extensive regions in the country, containing hundreds of thousands of people, where scarcely a single one owning that amount could be found. All lands and houses, and every species of property classified as real estate, are by the terms of the act, excluded from the computation, and we are quite sure that we have underestimated the amount in the statement that ninety-nine per cent. of the property of the estates in the country is exempt from this tax.

According to the census of 1890 the true value of all the personal property in the United States was \$25,492,546,864, and the total popu-

lation was 62,622,250, making the value \$407.08 *per capita* at that time. If we assume that the value has increased fifty per cent. *per capita* since that time, which is a most extravagant estimate, it would now be only \$610.62. Although the personal property in the country is not equally distributed among the people, it is not at all probable that as much as one per cent. [766,990] of the total population could be selected, each one of whom owns more than \$10,000 in value. The enormous aggregation of personal property owned by corporations of all kinds, such as railroad companies, banks, insurance companies, trust companies, street-car companies, manufacturing and commercial companies and others, is all included in our statement of total value, but all of it escapes taxation under this act.

If a sound public policy requires that the wealthy owners of property, or the beneficiaries of wealthy estates, shall be taxed at higher rates than others, it is clear, not only that the personal property belonging to corporations should be reached by the law, but that real estate, the true value of which in 1890 was \$39,544,544,333, should also be included.

There are no public considerations what-

ever to justify these unusual and unreasonable exemptions. They are purely arbitrary and grossly unjust. But, having made these extraordinary exemptions and omissions, the act proceeds to make arbitrary classifications and to impose upon the things subject to taxation under its provisions, rates of duty so unequal and unjust that it is impossible to see upon what rule or principle of public policy or constitutional law they are to be defended.

The parts taken out of the estates as legacies and distributive shares are not classified as such in any way, but the beneficiaries are classified according to the degrees of their relationship to the decedent, and the estates out of which the shares are taken are classified according to their value. The initial rates of taxation upon the several parts of the property are varied according to the degrees of relationship; but the progressions in the rates are regulated entirely by the value of the whole personal property out of which the several parts are taken. The act creates seven classes of beneficiaries :

1. The surviving husband or wife of the decedent, whose parts of the estate are wholly exempt.

2. All legatees and distributees, without regard to relationship, who receive shares out of estates not exceeding ten thousand dollars in value, whose shares of the property are also wholly exempt.

3. Lineal descendants and lineal ancestors, and the brothers and sisters of the decedent, whose shares of the property are taxed progressively according to the value of the whole personal estate out of which they are taken.

4. The descendants of brothers and sisters of the decedent, whose shares of the property are taxed progressively according to the value of the whole personal estate out of which they are taken.

5. The brothers and sisters of the father or mother of the decedent, and the descendants of such brothers and sisters, whose shares of the property are taxed progressively according to the value of the whole personal estate out of which they are taken.

6. The brothers and sisters of the grandfather or grandmother of the decedent, and the descendants of such brothers and sisters, whose shares of the property are taxed progressively according to the value of the whole personal estate out of which they are taken ; and

7. All other collaterals, all strangers in blood, and all bodies politic and corporate, whose shares of the property are taxed progressively according to the value of the whole personal estate out of which they are taken.

The personal estates of decedents are divided by the act into six classes, as follows :

1. Estates not exceeding ten thousand dollars in actual value, which are wholly exempt.

2. Estates valued at more than ten thousand dollars, but not exceeding twenty-five thousand dollars, the whole amount of which is taxed.

3. Estates valued at more than twenty-five thousand dollars, but not exceeding one hundred thousand dollars, the whole amount of which is taxed.

4. Estates valued at more than one hundred thousand dollars, but not exceeding five hundred thousand dollars, the whole amount of which is taxed.

5. Estates valued at more than five hundred thousand dollars, but not exceeding one million dollars, the whole amount of which is taxed.

6. Estates exceeding one million dollars without regard to their values in excess of that amount, the whole amount of which is taxed.

It will be seen, therefore, that, if the whole personal estate held in charge or trust to pay legacies or distributive shares does not exceed ten thousand dollars in value, no part of it is taxed, but if it exceeds that valuation no part of it is exempt. The part taken by a stranger in blood who receives the whole property of a decedent leaving an estate not exceeding ten thousand dollars in value, is not required to pay any tax; but the part of the property taken by a son or daughter of the decedent who receives the same amount out of an estate exceeding one million dollars in value, is subject to a tax of two and a quarter per cent. Lineal descendants of two decedents who leave personal estates of different values, may receive shares of exactly the same amount, but they will be taxed at wholly different rates; and the same is true of the constituents of each of the other classes created by the act. There is no semblance of uniformity in the taxation, either upon the property as a whole or upon the several parts taken out of it by the beneficiaries, or upon the privilege. An almost infinite variety of illustrations might be given to show the utter lack of uniformity in the tax or duty, but this is unneces-

sary, as the practical operation of the statute will be demonstrated by the following statements based upon a legacy or distributive share of ten thousand dollars, and exhibiting the different rates of taxation imposed upon the same amount of money, and upon the same kind and amount of property, held in charge or trust for its payment, and bequeathed to or inherited by members of the same class.

LINEAL ISSUE, LINEAL ASCENDANT, OR BROTHER
OR SISTER.

Value of personal estate.	Clear value of legacy.	Amount taxable.	Rate for every \$100.	Amount of tax.
\$10,000 00	\$10,000 00	None.	0 %	\$0 00
10,500 00	10,000 00	\$ 10,000 00	0 $\frac{3}{4}$ %	75 00
25,000 00	10,000 00	10,000 00	0 $\frac{3}{4}$ %	75 00
25,500 00	10,000 00	10,000 00	1 $\frac{1}{8}$ %	112 50
100,000 00	10,000 00	10,000 00	1 $\frac{1}{8}$ %	112 50
100,500 00	10,000 00	10,000 00	1 $\frac{1}{2}$ %	150 00
500,000 00	10,000 00	10,000 00	1 $\frac{1}{2}$ %	150 00
500,500 00	10,000 00	10,000 00	1 $\frac{3}{8}$ %	187 50
1,000,000 00	10,000 00	10,000 00	1 $\frac{3}{8}$ %	187 50
1,500,000 00	10,000 00	10,000 00	2 $\frac{1}{4}$ %	225 00
5,000,000 00	10,000 00	10,000 00	2 $\frac{1}{4}$ %	225 00

DESCENDANT OF A BROTHER OR SISTER.

Value of personal estate.	Clear value of legacy.	Amount taxable.	Rate for every \$100.	Amount of tax.
\$10,000 00	\$10,000 00	None.	0 %	0 00
10,500 00	10,000 00	\$10,000 00	1½ %	\$150 00
25,000 00	10,000 00	10,000 00	1½ %	150 00
25,500 00	10,000 00	10,000 00	2¼ %	225 00
100,000 00	10,000 00	10,000 00	2¼ %	225 00
100,500 00	10,000 00	10,000 00	3 %	300 00
500,000 00	10,000 00	10,000 00	3 %	300 00
500,500 00	10,000 00	10,000 00	3¾ %	375 00
1,000,000 00	10,000 00	10,000 00	3¾ %	375 00
1,500,000 00	10,000 00	10,000 00	4½ %	450 00
5,000,000 00	10,000 00	10,000 00	4½ %	450 00

BROTHER OR SISTER, OR DESCENDANT OF
BROTHER OR SISTER, OF THE FATHER OR
MOTHER OF DECEDENT.

Value of personal estate.	Clear value of legacy.	Amount taxable.	Rate for every \$100.	Amount of tax.
\$10,000 00	\$10,000 00	None.	0 %	\$00 00
10,500 00	10,000 00	\$10,000 00	3 %	300 00
25,000 00	10,000 00	10,000 00	3 %	300 00
25,500 00	10,000 00	10,000 00	4½ %	450 00
100,000 00	10,000 00	10,000 00	4½ %	450 00
100,500 00	10,000 00	10,000 00	6 %	600 00
500,000 00	10,000 00	10,000 00	6 %	600 00
500,500 00	10,000 00	10,000 00	7½ %	750 00
1,000,000 00	10,000 00	10,000 00	7½ %	750 00
1,500,000 00	10,000 00	10,000 00	9 %	900 00
5,000,000 00	10,000 00	10,000 00	9 %	900 00

BROTHER OR SISTER, OR DESCENDANT OF
BROTHER OR SISTER, OF THE GRAND-
FATHER OR GRANDMOTHER OF DECEDENT.

Value of personal estate.	Clear value of legacy.	Amount taxable.	Rate for every \$100.	Amount of tax.
\$10,000 00	\$10,000 00	\$None.	0%	\$0 00
10,500 00	10,000 00	10,000 00	4%	400 00
25,000 00	10,000 00	10,000 00	4%	400 00
25,500 00	10,000 00	10,000 00	6%	600 00
100,000 00	10,000 00	10,000 00	6%	600 00
100,500 00	10,000 00	10,000 00	8%	800 00
500,000 00	10,000 00	10,000 00	8%	800 00
500,500 00	10,000 00	10,000 00	10%	1,000 00
1,000,000 00	10,000 00	10,000 00	10%	1,000 00
1,500,000 00	10,000 00	10,000 00	12%	1,200 00
5,000,000 00	10,000 00	10,000 00	12%	1,200 00

OTHER COLLATERALS, STRANGERS IN BLOOD,
AND BODIES POLITIC AND CORPORATE.

Value of Personal Estate.	Clear Value of Legacy.	Amount Taxable.	Rate for Every \$100.	Amount of Tax.
\$10,000 00	\$10,000 00	None.	0.00	\$0 00
10,500 00	10,000 00	\$10,000 00	5%	500 00
25,000 00	10,000 00	10,000 00	5%	500 00
25,500 00	10,000 00	10,000 00	7½%	750 00
100,000 00	10,000 00	10,000 00	7½%	750 00
100,500 00	10,000 00	10,000 00	10%	1,000 00
500,000 00	10,000 00	10,000 00	10%	1,000 00
500,500 00	10,000 00	10,000 00	12½%	1,250 00
1,000,000 00	10,000 00	10,000 00	12½%	1,250 00
1,500,000 00	10,000 00	10,000 00	15%	1,500 00
5,000,000 00	10,000 00	10,000 00	15%	1,500 00

The power of Congress, in proper cases, to make classifications for the purposes of taxation is not denied, but it must classify the things taxed, not the people who own them; and in classifying the things taxed it must group together things which bear an actual relation to each other, and which, on account of their character or use, are really distinguishable from all the things included in the other groups or classes. But neither Congress nor the States can make classifications, however proper they may be, and then impose different rates of taxation upon the constituents of the same class, as is done in this act.

But from what source is it claimed that Congress derives the power to classify the beneficiaries of estates disposed of by last will and testament, or inherited, under the laws of a State, and to impose different rates of taxation, or different conditions, even upon different classes, according to their degrees of relationship to a decedent? According to the decisions of this Court already cited, no one has a natural right to dispose of property by will, and consequently lineal descendants, lineal ascendants, collaterals of any degree, and strangers in blood,

all derive their right to take legacies under a will, or to inherit the property of a deceased owner from the State; and, this being so, it follows necessarily that, in the absence of a State statute conferring these rights and privileges, all persons, whether related in any way to the decedent or not, stand upon a footing of perfect equality in these respects. The grant to each of them by the State is, according to the decisions, wholly gratuitous and of the same nature and value in each case, and, therefore, in a legal sense, there is no more justification for the imposition by Congress of a higher rate of taxation, or a more onerous condition, upon the property taken by a stranger, or upon his privilege to take it, than there is for the imposition of a higher rate of taxation, or a more onerous condition, upon property taken by a lineal descendant, or upon his privilege to take it. Whether there shall be a higher rate of taxation, or a more onerous condition, imposed upon the one class than is imposed upon the other, is a question of internal policy to be decided by the State for itself; and, if it has not seen proper to make distinctions in these respects, Congress cannot usurp power over the subject and divide the beneficiaries of

State legislation into classes and make discriminations between them. So far as we have been able to discover, no State in the Union has made any such classifications as are made in this act. No State has grouped together in its laws concerning last wills and testaments, or regulating inheritances, "the lineal issue or lineal ancestor, or brother or sister of the person who died," or has grouped together any degree of collateral relations of the decedent and "strangers in blood and bodies politic or corporate," as is done by this statute. The States, in regulating these subjects, make no distinctions between classes in the right to make wills, or to take legacies, or inherit property, either on account of the value of the whole estate or the value of the legacy or share, and, while they do make certain distinctions and give certain preferences in conferring the right to take by inheritance, they are very different from those Congress has attempted to make for the purpose of taxing the property or the privilege of disposing of or receiving it. If the estate, or legacy, or distributable share, is the same in each case, the privilege of disposing of or receiving it is of the same nature and value in each case, without regard to the degree of

relationship existing between the decedent and the beneficiaries, and, when Congress legislates upon this subject, the same rate of taxation should be placed upon each. On the other hand, if the estate, or the legacy, or distributive share, is greater in one case than in another, the privilege of disposing of or receiving it is greater also, and proportional taxation will compel all to pay according to the actual value of the property disposed of or received, or the actual value of the privilege enjoyed; thus the largest amount of taxation would fall justly and uniformly upon the things of most value. But Congress has undertaken in this act to make arbitrary classifications based on relationship and the value of the whole estate out of which the shares are taken, not for the purpose of imposing taxes or conditions in proportion to the value of the shares, but for the purpose of taxing those taken out of the greater estates at higher rates than those taken out of the smaller ones, and by this means discriminating between different classes of estates and beneficiaries, and also between beneficiaries who are of the same class, as is conclusively shown by the statements on pages 63, 64 and 65 of this brief.

According to the decisions, the State may declare that no property shall be disposed of by will, or that a stranger in blood, or any particular class of relatives, shall not be capable of taking a legacy or inheritance, and that the whole estate shall descend to the lineal issue, or to such other persons as the Legislature may designate, and it may, therefore, classify the beneficiaries in any manner it chooses; but Congress has no power to do any of these things. The only limitation so far recognized by this Court on the power of the States over this subject is, that while they may make classifications and impose different rates of taxation upon the property taken by the different classes, or different conditions upon the exercise of the privilege by the different classes, the same rates and conditions must be imposed upon all the property and privileges of the same class. The source of the power of the States to make such classifications and to discriminate between the several classes in imposing taxes or conditions, has been fully explained by this Court, as we have already seen; but the power of Congress to legislate upon the subject, if it has any, is of a wholly different nature from that exercised by the authority that confers the

right or privilege, and must, therefore, rest upon a different foundation.

Neither Congress nor a State can, for the purposes of taxation, separate property or privileges of the same kind into different classes, and discriminate in the rates upon them merely on account of differences in the social or pecuniary condition of the owners. An attempt to do so is not classification ; and the increased rates exacted from a part of the people by such a proceeding is not taxation, but spoliation. No matter whether the right of the Government to impose taxes upon property for its own support is to be sustained upon the ground of benefits conferred upon the citizen, or the cost of the protection afforded him, or his ability to pay, proportional rates according to the values of the things taxed, without regard to their ownership, constitutes the only means by which the burden can be, even approximately, distributed without violating the rule of uniformity and equality in taxation, which is generally admitted to be fundamental. Unless it is the right and the duty of the Government to equalize the fortunes of the people, or, at least, to prevent great inequalities in fortunes, progressive taxation can have no place in our

legislation. Whatever its advocates may say to the contrary, it is a practical recognition of the vital principle of state socialism, and, logically, it cannot be so limited or restricted as to stop short of that result. When progressive taxation is resorted to it is done for the sole purpose of avoiding uniformity and equality by subjecting the property of a part of the people to more than its just share of the public burdens, and it is not only a violation of the express provisions of the Constitution, but a repudiation of the principle of equality upon which our political institutions are founded.

We maintain that this duty or excise, if it is a duty or excise, is not uniform in the meaning of the Constitution, (1) because of the exemptions made in the statute in favor of the surviving husband and wife, and in favor of all estates, or of the beneficiaries of all estates, not exceeding ten thousand dollars in value; (2) because property of the value of ten thousand dollars is not exempt also out of all taxable estates, or all legacies and distributive shares, exceeding that value; (3) because of the arbitrary and unreasonable classifications; (4) because of the discriminations made between the constituents of the same classes, and

(5) because of the unequal rates imposed upon property or privileges of the same kind and value. While this want of uniformity will probably not be seriously disputed, it will doubtless be contended in support of the statute, that the Constitution does not require uniformity among taxpayers, but simply that the rule of taxation, whatever it may be, shall be the same throughout the United States ; or, in other words, that a duty, impost or excise may be uniform throughout the United States, although it is not uniform at a single place in the United States. But the Constitution does not provide merely that the *rule* shall be uniform in all the States, or shall be the same in all the States, but that all *duties*, *imposts* and *excises*—that is, all indirect taxation—shall be uniform throughout the United States. The taxation itself must be uniform, and the words “throughout the United States ” were used to designate the territory within which it should be uniform ; and they apply to the District of Columbia and the Territories as well as to the several States (*Loughborough vs. Blake*, 5 Wheat., 317). The meaning is the same as if it was provided in the Constitution of a State that taxation should be uniform throughout the State ; that is, everywhere within the State.

The United States constitute one political community, and embrace a defined area which, it is true, includes many States and some Territories; but, in this clause, the Constitution does not refer to separate States or Territories, but to the whole area over which the jurisdiction of the general Government extends. Whenever the Constitution refers to the several States, as such, it is done in appropriate language. The instances in which it speaks of "the States," and the "several States," as separate and distinct territorial and political bodies, are so numerous that it would be tedious to mention them. There is a wide difference between a requirement that a law, or a regulation, or a tax, shall be uniform as between the States, and a requirement that it shall be uniform throughout the United States. When, for instance, it was intended to provide simply that a law or regulation should be the same in all the States, without regard to the uniformity or equality of its operation or effect upon the subjects to which it applied, it was declared that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be

obliged to enter, clear, or pay duties in another " (Art. 1, Sec. 5, Clause 6). By the terms of this clause it is not required that the regulations adopted shall bear equally and uniformly upon commerce, or the subjects of commerce, at all the ports throughout the United States, or at any one port in the United States, but if they are the same in the ports of all the States the constitutional provision is not violated. It is now argued by some that the same construction and effect must be given to another constitutional provision, which is altogether different in its terms, and in its objects also, as we understand it—that is, it is now argued that Section 8, Article 1, should be construed as if it read : " But in the imposition of duties, imposts and excises no preference shall be given to the people of one State over those of another ; nor shall different duties, imposts or excises be levied or collected in one State than in another." If such a clause as this were substituted for the one actually contained in the constitution it might well be argued that, so far as the constitutional inhibition applied to the question, Congress might impose higher rates upon small estates, or small legacies and distributive shares, than it imposed

on large ones, or *vice versa*, provided the same rule was applied in all the States. Whether unjust discriminations of this character would not be such a perversion and abuse of the power of taxation, as it is understood under a government of equal rights and privileges, as to make the act void, is a different question. We submit that if the authors of the Constitution had simply intended to establish a rule of uniformity as between the States, leaving Congress free to make such discriminations in all other respects as it might choose, they would not have employed the phrase "uniform throughout the United States," but would have made their meaning clear by the use of appropriate language.

In the "Head Money Cases," 112 U. S., 580, the Court decided that the act imposing a duty of fifty cents per head upon passengers brought in vessels from a foreign port to a port in the United States, was not passed in the exercise of the power to lay and collect taxes, but under the authority to regulate commerce; and Mr. Justice MILLER, who delivered the opinion of the Court, said :

"It is said that the statute violates the

rule of uniformity and the provision of the Constitution that 'no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another,' because it does not apply to passengers arriving in this country by railroad or other inland mode of conveyance. But the law applies to all *ports* alike, and evidently gives no preference to one over another, but is uniform in its operation in all ports in the United States."

But upon the proposition, urged by counsel, that the duty was imposed under the power to tax, the Court, after quoting the constitutional provision on that subject, said :

" In this view it is objected that the tax is not levied to provide for the common defense and general welfare of the United States, and that it is not uniform throughout the United States. The uniformity here prescribed has reference to the various localities in which the tax is intended to operate. ' It shall be uniform throughout the United States. * * * ' The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this by ocean navigation, is uniform, and operates precisely alike

in every port of the United States where such passengers can be landed."

The Constitution provides that Congress shall have power "to establish an uniform rule of naturalization; and uniform laws on the subject of bankruptcy throughout the United States" (Art. I, Sec. 8, clause 4). The meaning of this clause, so far as it relates to the subject of bankruptcy, was considered in *Sturgis vs. Crowninshield*, 4 Wheat., 122, and Chief-Justice MARSHALL said :

"The peculiar terms of the grant certainly deserve notice. Congress is not authorized merely to pass laws the operation of which shall be uniform, but to establish uniform laws on the subject throughout the United States."

In *Ogden vs. Saunders*, 12 Wheat., 213, Mr. Webster argued that the Constitution provided for two things :

"1. A uniform medium for the payment of debts. 2. A uniform manner of discharging debts, when they are to be discharged without payment."

Again, he said :

"We maintain: First, that the Constitution, by its grants and its prohibitions on

the States, has sought to establish one uniform standard of value or medium of payment. Second, that, by like means, it has endeavored to provide for one uniform mode of discharging debts, when they are to be discharged without payment."

Mr. Justice JOHNSON, who delivered one of the separate opinions in the case, neither approved nor condemned the construction put upon the Constitution by counsel, but said :

" Yet, on this subject the use of the term 'uniform,' instead of 'general,' may well raise a doubt whether it meant more than that such a law should not be partial, but have an equal and uniform application in every part of the Union."

In construing this provision of the Constitution in *Re Deckert*, 2 Hughes, 183, Chief-Justice WAITE said :

" A bankrupt law, therefore, to be constitutional, must be uniform. Whatever rule it prescribes for one *it must prescribe for all. It must be uniform in its operations, not only within a State, but within and among all the States.*"

See, also, *Sweatt vs. Railroad Company*, 3 Clifford, 339.

It would not be a strained construction of that provision of the Constitution to hold that it

only required the law itself to be uniform in its operation throughout the United States, and not that the uniformity should exist as to the manner of discharging debtors, though it is scarcely to be supposed that it was intended to authorize legislation upon this subject which would enable one creditor to secure a discharge upon different conditions than those required in the case of another in the same situation. But, however this may be, the language of the two constitutional provisions is not the same, and the subjects to which they relate are very different ; and, therefore, even if discriminations could be constitutionally made between debtors in cases of bankruptcy, it would not by any means follow that they might also be made in the imposition of indirect taxes.

In *Loughborough vs. Blake*, 5 Wheat., 660, Chief-Justice MARSHALL said :

“ The eighth section of the first article gives Congress the ‘ power to lay and collect taxes, duties, imposts and excises ’ for the purposes therein mentioned. This grant is general, without limitation as to place. It, consequently, extends to all places over which the Government extends. If this could be doubted, the doubt is removed by the subsequent words which modify the

grant. These words are: 'but all duties, imposts and excises shall be uniform throughout the United States.' It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great Republic, which is composed of States and Territories. The District of Columbia, or the Territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts and excises, and since the latter extend throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

It will be observed that Chief-Justice MARSHALL did not say that the uniformity required by the

Constitution in the imposition of duties, imposts and excises, was required to exist merely as between, or among, the States and Territories and the District of Columbia ; but, with his usual accuracy of expression, he said that it must exist "*in the one*" as well as "*in the other.*"

In *United States v. Singer*, 15 Wall., 121, the Court said:

"The tax here is uniform in its operation ; that is, it is assessed *equally* upon all manufacturers of spirits wherever they are. The law does not establish one rule for one distiller, and a different rule for another, but the same rule for all alike."

In this opinion the Court distinctly recognized equality among taxpayers as an essential element of the uniformity required by the Constitution, for the excise in question was sustained upon the ground that it was not only the same wherever the subject was found, but that it was assessed "equally upon all manufacturers of spirits wherever they are."

This Court has had more than one occasion to pass upon questions involving the construction of State Constitutions upon the subject of taxation, and in every such case it has so interpreted

them as to protect the citizen against discriminations, although the constitutional provisions were by no means as plain in their requirements as the one now relied on. The Constitution of Michigan provides that :

“ The Legislature shall provide a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law.”

The Constitution of Ohio provides :

“ Laws shall be passed taxing by a uniform rule all monies, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also all real and personal property according to its true value in money.”

And the Constitution of Wisconsin provides :

“ The rule of taxation shall be uniform.”

In the case of *Pine Grove vs. Talcott*, 19 Wall. (86 U. S.), 666, the Court, referring to the Constitution of Michigan, said :

“ The eleventh clause of the same article declares that the Legislature shall provide a uniform rule of taxation, except as to property paying specific taxes, and that taxes shall be levied upon such property as shall

be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being, classified, and taxed as classified by different rules. All kinds of property must be taxed uniformly or be entirely exempt. The uniformity must be co-extensive with the territory to which the tax applies. If a State tax, it must be uniform all over the State ; if a county or city tax, throughout such county or city."

In *Gilman vs. Sheboygan*, 2 Black (67 U. S.) 510, the provision which we have quoted from the Constitution of Wisconsin came before this Court, and it was held that a statute of that State which imposed a tax upon real estate exclusively was void. The Court said :

" This tax was levied exclusively upon the real estate of the city. That was a discrimination in favor of the personal property. It was beyond the constitutional power of the Legislature to make any discrimination. Property must be wholly exempted or not exempted at all. No partial exemption or discrimination is permitted. To impose certain taxes upon one class of taxable property is as much a discrimination as to vary the rates of the same or other taxes upon different classes of property."

In *Exchange Bank of Columbus vs. Hines*, 3 Ohio St., 1, the Court said :

“ What is meant by the words ‘ taxing by a uniform rule ’ ? No words in the Constitution, perhaps, are more important than these, and, to accomplish the beneficial purposes intended, it is essential that they should be truly interpreted and correctly applied. ‘ Taxing ’ is required to be ‘ by a uniform rule ; ’ that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxation implies equality in the burden of taxation ; and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation.”

This decision was quoted from and approved by this Court in *Gilman vs. Sheboygan*. In all these cases the constitutional provision simply required that the *rule* of taxation should be uniform, and not, as is required by the Constitution of the United States, that the taxation itself should be uniform ; but this Court held that, under such provisions, no discriminations could be made, or, in other words, that a uniform rule necessarily implied uniformity and equality

in the taxation itself, and that it was not sufficient merely to apply the same rule throughout the State, whether it operated equally or unequally. The language of the constitutional provision upon which we rely in these cases is plain and explicit, and its purpose, we think, cannot be misunderstood. It was intended to assert and make permanent and effective throughout the United States, the principle that all taxes imposed by the general Government upon the property of the people, except direct taxes, which, for political reasons, were required to be apportioned among the States, should be equal and uniform everywhere within its jurisdiction. It asserted no new rule or principle, nor did it abrogate any old one. There is nothing in the language of the Constitution, or in the history of the times, to justify the conclusion that the men who framed it, or the States and people when it was ratified, intended to deprive themselves and their posterity of the protection afforded by the well-settled rule requiring uniformity and equality in taxation. In fact, there is no good reason to suppose that even direct taxes were not intended to be laid uniformly and equally in each State upon all the

property there subject to it, though the amount apportioned to each State out of the whole sum to be raised might require higher rates upon the same kind of property in one State than in another.

But having, for reasons and considerations of a political character, which were deemed sufficient, provided for the apportionment of direct taxes, without expressly requiring uniformity in the rates within each State, the Constitution then provided for the imposition of "duties, imposts and excises," which include all other taxes, and by the use of a term, the meaning of which, when applied to the subject of taxation, was then well understood by lawyers, legislators, political economists and writers on the science of government, expressly required them to be "uniform" throughout the United States. Uniformity and inequality are incompatible terms, and consequently uniformity throughout the United States does not permit inequality anywhere in the United States. The word "uniform" was undoubtedly used in its ordinary sense, as expounded by the familiar authorities on the subject, and as practically construed in the legislation of this and other enlightened countries at that time, and,

unless its meaning is qualified or restricted by the phrase "throughout the United States," there can be no ground for controversy concerning the purpose for which it was employed in the Constitution.

We have argued that these words do not constitute a modification or limitation of the rule as previously understood, but were used only for the purpose of designating the territory or jurisdiction within which the uniformity was required to exist; and it must be admitted, we think, that, if this is not the correct construction, the Constitution affords but little, if any, protection against unjust discriminations in taxation upon the property or earnings of the people in any State.

It has been suggested that, if the construction of the Constitution for which we are contending is correct, the uniformity required by that instrument in the imposition of duties, imposts and excises does not exist when *ad valorem* rates of duty are imposed upon some imported goods, and specific rates, without regard to their value, are imposed upon others. This, if true, would not alter the meaning of the Constitution; but we fail to see that such a suggestion, in the form in

which it is made, has any bearing upon the question. In laying indirect taxes Congress has the right to classify the things taxed, and whether such taxation is or is not uniform, in the case supposed, depends entirely upon the character of the classification. It may tax one class of goods at one rate and another at a different rate, or one class at an *ad valorem* rate and another at a specific rate; but if it should undertake to tax the same article at different rates, or by such different methods as to make the imposition unequal, the rule of uniformity, as we interpret it, would be violated.

It is the province of the Court to consider only the question of power. If it decides that the authority to make discriminations in taxation exists, the manner in which it shall be exercised must be finally and conclusively determined by the legislative branch of the Government, and it may, if it chooses, reverse the policy of this act and discriminate in favor of the rich and against the poor, as was done by France in the Fourteenth century, when the purpose was to exempt the wealthy nobility from their just share of the public burdens, and afterwards by some of the towns in Germany, for the purpose of favoring

the aristocratic and feudal classes. We do not believe that any such dangerous and arbitrary power can be found lurking anywhere in our Constitutions, State or Federal, and we respectfully but earnestly insist that it shall be repudiated and condemned by the judgment of the Court in these cases.

V.

If we accept such a construction of the Constitution as would require duties, imposts and excises to be geographically uniform only, this act does not conform to it. The tax is imposed only upon personal estates, or upon legacies and distributive shares, "passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any *State or Territory*," and it is provided that the receipt for the tax, given by the collector or deputy collector, shall be sufficient evidence to entitle the administrator, executor or trustee to be credited for the amount "by any tribunal which, by the laws of any *State or Territory*, is, or may be, empowered to decide and settle the accounts of executors and administrators." These are the only provisions in the act showing

the geographical area within which the tax was to be imposed and collected. The act of 1864, from which these clauses were taken, provided that :

“Whenever the word ‘State’ is used in this act it shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out the provisions of this act” (13 Stat., 306).

Section 3140 of the Revised Statutes of the United States provides that “the word ‘State,’ when used in this title, shall be construed to include the Territories and the District of Columbia when such construction is necessary to carry out its provisions.” The title is “Internal Revenue,” and includes the sections from 3140 to 3465. No such provisions as we have quoted are contained in the act imposing the tax in controversy, and we think the inference is clear that if it had been intended to embrace the District of Columbia, it would have been expressly mentioned, or some general clause would have been inserted to indicate that purpose. The only reference in the act to the former laws on the subject of taxation is contained in Section 31, which

provides "that all administrative, special or stamp provisions of law, including the laws in relation to the assessment of taxes, are hereby made applicable to this act;" and it is evident that this cannot be so construed as to affect the question now presented.

Property in the District of Columbia is not disposed of by will or inheritance, or received under wills or by inheritance, under the laws of a State or Territory. The District of Columbia is neither a State nor a Territory, and it cannot become a State, for under the Constitution it is subject to the exclusive legislative jurisdiction of Congress, and this jurisdiction cannot be abdicated (*Stoutenburgh vs. Hennick*, 129 U. S., 141; *Hepburn & Dundas vs. Ellzey*, 2 Cranch, 452). Within its limits, as now defined, Congress possesses all the legislative power formerly possessed by the State of Maryland, and, in addition, all the powers delegated by the Constitution of the United States, and in their exercise it does not treat the District as either a State or a Territory. Its relations to Congress, and the character of its government, are wholly different from those of the States and organized Territories; and, if not mentioned in a statute relating to a special subject, it is

not included; and this is necessarily so when, as in this case, the States and Territories are expressly included and the District is omitted. "*Expressio unius est exclusio alterius*" is a maxim of universal application in the construction of statutes and constitutions, and the enumeration of the parts of the country to which the act applies necessarily excludes every other part. Another rule, equally applicable to this case, is that when a constitution or a statute is expressed in plain and unambiguous terms, whether they are general or limited, it must be taken to mean just what it says (*Lake County vs. Rollins*, 130 U. S., 662; *St. Paul, M. & M. Railroad Company vs. Phelps*, 137 U. S., 528).

Or, as was said by this Court in the case of *Thornly vs. United States*, 113 U. S., 310, "Where the meaning of a statute is plain, it is the duty of the courts to enforce it according to its obvious terms. In such a case there is no necessity for construction;" and, although it would seem that no authority was necessary to support so plain a proposition, the Court cited numerous cases in which it had been stated and approved.

The provisions of a statute imposing taxes

upon the property of the people cannot, we think, be so construed as to extend them to territory to which they plainly do not apply, nor can they be made to embrace subjects of taxation not plainly designated. Such a rule of construction is necessary in order to preserve the distinction between legislative and judicial power, as well as for the protection of the rights of property, and it cannot be properly disregarded upon the assumption that the territory omitted, or the subjects omitted, would have been included if the attention of the Legislature had been called to them. The statute must be construed and administered as it was enacted, and if there are errors or omissions they must be cured by the legislative authority, as was done by the direct-tax act of February 27, 1815, extending that tax to the District of Columbia, which had been omitted by the act of January 9, 1815 (3 Stat., 164; *Ibid.*, 216).

The constitutionality of this act, extending the direct tax to the District, was passed upon by this Court in *Loughborough vs. Blake*, 5 Wheat., 660, heretofore cited and quoted from.

Could the collection of this tax be lawfully enforced in the District? Can this Court inter-

polate the words "District of Columbia" into the act, and thereby subject the estates of decedents in the District to the tax which it imposes? If the act contained any language showing a purpose to impose the tax on property in the District, the Court might properly so construe it as to disregard the accidental omission of the words "District of Columbia" in a particular part of it, if it believed they had been accidentally omitted; but when, as in this instance, terms are twice employed which are inconsistent with it, such a construction would result in the imposition of taxation by the Court itself. Suppose the act had used the words "States and District of Columbia" in the provision designating the estates to be taxed and, again in the provision concerning the effect of the collector's receipt, could it possibly have been so construed as to include the Territories? Certainly not, unless the Court can make a tax law for those parts of the country.

It is scarcely necessary to cite authority to show that laws imposing taxes are to be strictly construed, except such parts of them as are remedial in their nature. The English cases on this subject are clear and consistent. In War-

rington vs. Furber, 8 East., 242, Lord ELLENBOROUGH said:

“ Where the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out, and we should give a liberal construction to words of exception confining the operation of the duty.”

And in Williams vs. Sangar, 10 East., 66, he said :

“ In the construction of these tax acts we must look at the strict words, however we may sometimes lament the generality of the expressions used in them ; but we must construe those words according to their plain meaning with reference to the subject matter.”

In Denn vs. Diamond, 4 B. & C., 224, the Court said :

“ It is a well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language.”

In Tompkins vs. Ashby, 6 B. & C., 541, it was said :

“ Acts of Parliament imposing duties are to be so construed as not to make any instrument liable to them unless manifestly within the intention of the legislation.”

And in *Doe vs. Smith*, 8 Bing., 142, the Court said :

“ As all stamp acts, being a burden on the subject, must be clearly expressed wherever they impose the burden, I should say that, even if there were doubt, we should take the smaller sum.”

In *Wroughton vs. Turtle*, 11 Mees. & W., 561, the Court said :

“ It is a well-settled rule of law that every charge on the subject must be imposed by clear and unambiguous words.”

This rule of construction has been repeated and approved in many other cases in England. See *Marquis of Chandos vs. Commissioner of Inland Revenue*, 6 Exch. 464, and *Gurr vs. Scudds*, 11 Exch., 190, in which it was said :

“ If there is any doubt as to the meaning of the stamp act, it ought to be construed in favor of the subject, because a tax cannot be imposed without clear and express words for that purpose.”

“ It is a well-settled rule of law,” says *Dwaris on Statutes*, 742, “ that every charge upon the subject must be imposed by clear and unambiguous language. Acts of Parliament which impose a duty upon the public will be critically

construed with reference to the particular language in which they are expressed. When there is any ambiguity found, the construction must be in favor of the public, because it is a general rule that, when the public are to be charged with a burden, the intention of the Legislature to impose that burden must be explicitly and distinctly shown."

We concede that provisions contained in revenue laws for the purpose of prohibiting and punishing the perpetration of frauds upon the Government in the collection of its taxes, do not come within the rule for which we are now contending, but are to be liberally construed in order to accomplish the objects intended. See

Taylor vs. U. S., 3 How., 197.

Cliquot Champagne Case, 8 Wall.,
114.

U. S. vs. Hobson, 10 Wall., 395.

Smythe vs. Fiske, 23 Wall., 374.

Judge COOLEY, in a note referring to the case of Taylor vs. United States, cited above, says:

"The opinion in this last case was given by Mr. Justice STORY, and the language made use of, which consists largely in a quotation from the opinion given in the lower Court, does not express his own views

so clearly as was customary with that learned judge. What is manifest in his opinion is that the point was not regarded as of importance in that case, the meaning of the statute being plain; and while the distinction pointed out by the lower Court between penal and remedial laws is approved, and shown to be in accordance with the authorities, it is not clear that the general remarks of the judge were intended to go farther. It would have been a remarkable circumstance if Mr. Justice STORY had overruled his own opinion, delivered so recently that, at that time, his son [and reporter] had not issued the volume containing it" (Cooley on Taxation, 205).

The opinion last referred to in this extract was given in the case of *United States vs. Wigglesworth*, 2 Story, 369, in which Mr. Justice STORY said :

"In the first place, it is, as I conceive, a general rule, in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the Government, and in

favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense remedial laws, or laws founded upon any permanent public policy, and, therefore, are not to be liberally construed."

It was said, also, by Mr. Justice NELSON, in *Powers vs. Barney*, 5 Blatch. 202, that duties "are never imposed upon the citizen upon vague or doubtful interpretations;" and in *U. S. vs. Watts*, 1 Bond, 580, it was said:

"The revenue laws are not to be so construed as to extend their meaning beyond the clear import of the words used."

In view of the numerous decisions upon this subject, and the sound reasons upon which they are based, we cannot see how it is possible to hold that the act involved in these cases must be so construed as to impose this onerous and unequal tax upon the property of decedents in the District of Columbia; and, if not so construed, it is invalid, no matter what meaning may be attached to the provision of the Constitution requiring all duties, imposts and excises to be "uniform throughout the United States."

Although a considerable part of this brief has been devoted to an examination of the particular provisions of the statute in order to arrive at its true construction, we do not regard that question as material in determining its constitutionality, for, according to any interpretation that can be given to it, the tax must be either direct or indirect, and, as it is neither apportioned nor uniform, it necessarily fails to comply with either of the requirements of the Constitution. But, while the question of construction does not, as we think, have any important bearing upon the character of the tax or duty, still, if the tax or duty is held to be constitutional, that question is important in determining whether the act has been correctly enforced by the revenue officials, because if the charge is imposed upon the separate legacies and shares, or upon the privilege of receiving them, excessive amounts have been collected by the Government in almost every case. No legacy or share, or privilege, not exceeding ten thousand dollars in value, has been exempted, nor have the progressive rates of taxation been varied in any case according to the values of the legacies or shares, or privileges, but they have been regulated in every instance by the

value of the whole personal estate held in charge or trust by the administrator, executor or trustee. In the Knowlton case, owing to the fact that a single legatee received a share exceeding one million dollars in value, the excess collected was only \$1,991.75, but in many large estates, where the legacies and shares were numerous, and each one comparatively small, the excess constituted much more than one-half the tax collected.

While it is not a matter affecting the merits of any proposition involved in these cases, the facts that the Government will not be subject to any present embarrassment if required to refund what has already been collected, and that the prompt and efficient administration of public affairs is not at all likely to be dependent upon the continued collection of this tax, may properly be regarded as presenting a most favorable opportunity for the application of the true principles of the Constitution to this great subject of taxation, which is constantly growing more difficult and important on account of the multiplication of our industrial pursuits, the extent and character of investments in different kinds of property and the unequal distribution of

wealth among the people. In the presence of real or supposed emergencies, measures have sometimes been resorted to which could not have survived the test of judicial scrutiny, and the only certain way to prevent them, and thus save the Government from embarrassment at critical periods in the future, is to prescribe in advance the limits within which Congress may appropriate the property of the people by the imposition of taxes, duties, imposts and excises. The cases now before the Court seem to require distinct definitions of the two classes of taxation authorized by the Constitution, and an authoritative exposition of the rules to be observed by Congress in the exercise of its power to impose them; and we feel confident that, when this is done, the Court will be constrained to reverse the judgments in both cases.

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